

## CHAPTER ~~5~~5. REPORTING

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### Key to Lobbying Disclosure Regulations

Original text – former regulations at 51 Pa.Code § 31.1 *et seq.* promulgated under Act 1998-93.

Track changes (working copy) – recommend changes to the former regulations that are now required by Act 2006-134. Deletions are shown as strikeouts, and additions are underlined.

Footnotes – explain the reasons for the track changes in the working copy and will be used for the Preamble placed in the *Pennsylvania Bulletin*, which contains the explanation and justification for the regulations. For purposes of clarity in this document only, Act 134 is referenced as Act 2006-134, and Act 93 is referenced as Act 1998-93.

Highlighting – denotes major issues in the text and footnotes for the Committee's consideration.

Sec.

~~5~~5.1. Quarterly expense reports.

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~~5~~5.2. Records maintenance, retention and availability..

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55.3 Public Inspection and copying.

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55.4 Reliance on Manual

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### Cross References

This chapter cited in 51 Pa. Code § ~~5~~1.1 (relating to definitions).

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§ ~~5~~5.1. Quarterly expense reports.

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(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal, registered lobbying firm<sup>1</sup> or registered lobbyist lobbying on the principal's behalf, or both, exceed \$2,500<sup>2</sup> in a quarterly reporting period.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered

<sup>1</sup> Sections 1304-A and 1305-A of Act 2006-134 requires the registration, and, in certain instances the reporting, of lobbying firms, in addition to principals and lobbyists.

<sup>2</sup> Section 1305-A(d) of Act 2006-134 sets the threshold for reporting lobbying expenses at expenses exceeding \$2,500.

principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, or both, are \$2,500 or less, a statement to that effect shall be filed with the Department by checking the appropriate block on the quarterly expense report form.

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(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304-A and 1305-A of the act (relating to registration; and reporting), section 1305-A(b)(2.1) of the act permits filers to use any reasonable methods of estimation and allocation.

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(d) The principal shall file a quarterly expense report or statement of failure to meet the reporting threshold on or before the 30th day after the quarterly reporting period ends.

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(e) Pursuant to section 1305-A(b)(6) of the act and as detailed in subsection (n) of these regulations, a lobbyist or lobbying firm<sup>3</sup> required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if the principal fails to file in accordance with subsection (d) or if, during the reporting period, the lobbyist or the lobbying firm engaged in lobbying which was not contained in the report filed by the principal represented by the lobbyist or lobbying firm. The deadline for filing a separate report shall be the 30th day after the due date of the principal's report, or 30 days after discovery of the principal's failure to file, or 30 days after the lobbyist or lobbying firm should have reasonably discovered the principal's failure to file.<sup>4</sup>

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¶ Cash basis - revenue and related assets are recognized when received and expenses are recognized when payment is disbursed. For example, payroll costs are reported when paid, not when the associated hours are worked. ¶

¶ Accrual basis - income is recognized when earned and expenses when incurred. For example, payroll is recognized when the associated hours are worked regardless of when payment is made

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists or lobbying firms and amendments to these shall be filed on forms prescribed by the Department.<sup>5</sup>

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(g) A quarterly expense report of a principal required to be registered under the act shall include at least the following information:

(1) The names of all lobbyists or lobbying firms,<sup>7, 8</sup> by whom the lobbying is conducted

Deleted: (1) The name, permanent business address and daytime telephone number of any individual, firm,<sup>6</sup> association, corporation, partnership, business trust or business entity which contributed more than 10% of the total resources received by the principal during the reporting period. "Total resources" do not include the purchase, transfer, or ownership of stock in a publicly held corporation. ¶

3 Section 1305-A(b)(6) of Act 2006-134 requires a lobbying firm or lobbyist to submit an expense report if the expenses of the lobbying firm or lobbyist were not contained in any expense report filed by the principal(s) represented by the lobbying firm or lobbyist.

4 The Committee asked the Department to retain the essence of the former language and add the additional requirements contained above.

5 Section 1306-A of Act 2006-134 requires the Department to prescribe the reporting forms.

7 The Committee may wish to consider whether to add the term "lobbying firm" here because Section 1305-A(b)(1) of Act 2006-134 does not include lobbying firm in this requirement. On its quarterly expense reports, the Department requires principals to identify either the lobbying firms or lobbyists not affiliated with a lobbying firm who lobby on the principal's behalf.

8 The Committee asked the Department to delete "registered or unregistered."

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on behalf of the principal.<sup>9</sup> If a lobbyist is a lobbying<sup>10</sup> firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included.<sup>11</sup>

(2) The general subject matter or issue being lobbied,<sup>12</sup> which shall be indicated by checking the appropriate block on the form or completing the category designated "other." A principal, lobbying firm or lobbyist engaged in procurement may include this subject under the "other" category. Examples of items that need not be reported include:<sup>14</sup>

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(i) A listing indicating which lobbyists are lobbying on which matters.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communication or the identity of those with whom the communications take place.

<sup>15</sup>  
<sup>16</sup>  
(3) The total costs of all lobbying for the period. The total shall include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to State officials or employees, and any other lobbying costs. The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

(i) The costs for gifts, hospitality, transportation and lodging given to or provided to State officials or employees or their immediate families.

(ii) The costs for direct communication.

Deleted: (iv) The contents of privileged communications, such as those between attorney and client or doctor and patient.

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Deleted: (4) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, to be calculated as prescribed by subsection (i). ¶

(5) A single aggregate good faith estimate of the total amount spent for direct communication. In calculating this good faith estimate, any reasonable accounting method may be used. ¶

(6) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to State officials or employees or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section 1305(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employee, the aggregate economic value of which is \$10 or more, such value shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

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(7) A single aggregate good faith estimate of the total amount spent for indirect communication. In calculating this good faith estimate, any reasonable accounting method may be used. ¶

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<sup>9</sup> Section 1305-A(b)(1) of Act 2006-134 includes the requirement that the lobbying be conducted on behalf of the principal.

<sup>10</sup> The Committee may wish to consider whether to add the term "lobbying firm" here.

<sup>11</sup> The Committee may wish to consider whether to include this sentence because it is not explicitly included in section 1305-A(b), although it may be implied by section 1305-A(b)(4) of Act 2006-134.

<sup>12</sup> Section 1305-A(b)(1) of Act 2006-134 requires an expense report to include "the general subject matter or issue being lobbied."

<sup>14</sup> Because this list of specific items are not required to be reported in Act 2006-134, the Department stated in its instructions to the quarterly expense reports that these items do not need to be reported. (Likewise, these items were not included in Act 1998-93, so they were previously exempted from reporting in the former regulations at § 35.1.) The Committee may wish to consider whether these items should continue to be exempt from reporting, and thus listed as such here and in the instructions for quarterly expense reports.

<sup>15</sup> The Committee asked the Department to remove this subsection.

<sup>16</sup> The Committee may wish to consider whether to reinstate this "de minimis" exception to reporting, as it arose in the subcommittee discussions on the *Interim Guidelines*.

(iii) The costs for indirect communication.

(iv) Expenses required to be reported under this subsection shall be allocated to one of the three categories listed under this section and shall not be included in more than one category.<sup>17</sup>

(4) The information required to be disclosed by section 1305-A(b)(3) of the act, as detailed by subsections (g)(3)(i)<sup>18</sup>, and subsections (j) and (k) of these regulations.

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(5) The name, permanent business address and daytime telephone number of any individual,<sup>19</sup> association, corporation, partnership, business trust or other business entity which contributed more than 10% of the total resources received by the principal during the reporting period. "Total resources" includes all receipts by the principal during the reporting period.<sup>20</sup>

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(i) Total resources includes dues and grants received by the principal.

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(ii) Total resources does not include Medicare or Medicaid payments to the principal.

(h) A registered principal that attempts or that retains a lobbying or lobbying firm or lobbyist to<sup>21</sup> attempt to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3).

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(1) There is no prohibition against lobbyists or vendors being paid fees for procurement lobbying contingent upon the successful outcome of their lobbying.

(2) With certain exceptions, provided at 31 U.S.C. section 1352, federal funds cannot be spent by any recipient of a federally-funded contract to pay any person for lobbying a federal agency, employee or member of Congress.

(i)<sup>22</sup> Within the total costs of all lobbying for the period reported in § 55.1(g)(3) above, the amount spent for office and personnel expenses shall include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

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<sup>17</sup> The Committee may wish to consider adding the requirements of section 1305-A(b)(2) of Act 2006-134 to the regulations here in the same format that it appears in the act.

<sup>18</sup> Subsection (g)(3)(i) replaced subsection (g)(6).

<sup>19</sup> Section 1305-A(b)(5) of Act 2006-134 does not include the word "firm" in this requirement for reporting 10% of the total resources received by the principal.

<sup>20</sup> The Committee suggested that the Department rephrase the definition of "total resources."

<sup>21</sup> Section 1305-A(b)(7) includes this additional language.

<sup>22</sup> Section 1305-A(b)(2) of Act 2006-134 does not include the phrase "a single aggregated good faith estimate" that was used in section 1305(b)(2)(i) in Act 1998-93.

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(1) Any reasonable method may be used to determine how to allocate among direct and indirect communications.<sup>25</sup>

Deleted: (1) In calculating the single aggregate good faith estimate of the<sup>25</sup> total amount spent for personnel and office expenses related to lobbying, any reasonable accounting method may be used.

(2) Because the definitions of "gift" and "hospitality" in section 1303-A of the Act do not explicitly include personnel expenses and office expenses, if a principal sponsors an event for public officials and employees, the principal's expenses for mailing invitations, and the time its staff spends planning this event should be reported as direct or indirect communication.<sup>26</sup>

(3) Reportable personnel costs include costs for expenditures for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists,<sup>27</sup> lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff, and technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under section 1306-A<sup>28</sup> of the act (relating to exemption from registration and reporting).

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(4) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

(5) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a<sup>29</sup> prorated estimate based on the value of the time devoted to lobbying.

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¶ (i) Research time spent in preparation for lobbying. ¶

¶ (ii) Time spent in direct communication or indirect communication. ¶

¶ (iii) Other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.

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Deleted: Office expenses shall include an expense for an office, equipment or supplies utilized for lobbying,<sup>30</sup> and shall include

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(4)<sup>31</sup>

(j) A quarterly expense report shall also identify, by name, position and each

<sup>24</sup> Section 1305-A(b)(2.1) of Act 2006-134 includes the same provision that registrants filing expense reports may use any reasonable methods of estimation and allocation. However, because section 1305-A(b)(2.1) of the Act 2006-134 is included above in §55.1(c), it is not needed here.

<sup>25</sup> See section 1305-A(b)(2.1) of Act 2006-134.

<sup>26</sup> This language is taken from the *Interim Guidelines* in Section III on page 4 and in Section VII on Direct Communication on page 12.

<sup>27</sup> The definition of "Personnel expense" is included at section 1303-A of Act 2006-134 and includes these additional categories of employees.

<sup>28</sup> Section 1306(6) of Act 1998-93 included employees of a corporation who were not registered lobbyists, while section 1306-A of Act 2006-134 does not have such a specific category but could be included in other subsections of section 1306-A.

<sup>29</sup> Section 1305-A of Act 2006-134 does not use the terms "good faith," as Act 1998-93 did in this section.

<sup>31</sup> The Committee asked the Department to move the phrase "office expenses" to Section 51.1 (relating to definitions).

occurrence, the State officials or employees, or both, who received from a principal, lobbying firm<sup>32</sup> or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.<sup>33</sup>

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.<sup>34</sup>

(2) Each occurrence shall include the date and the circumstances of the gift and the payment or reimbursement for transportation, lodging or hospitality.<sup>35</sup>

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(3) The reporting of the provision of a gift to a State official or employee shall identify:

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(i) The name and position of the State official or employee,<sup>36</sup> including the governmental body of the State official or employee.<sup>37</sup>

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(ii) The name and address of the source of the gift.<sup>38</sup>

(iii) The value of the gift.<sup>39</sup>

(iv) The circumstances of the gift,<sup>40</sup> including the nature of the gift.

(4) The reporting of the provision of transportation/lodging/hospitality to a State official or employee in connection with public office or employment shall identify the following:

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(i) The name and position of the State official or employee,<sup>41</sup> including the governmental body of the State official or employee.<sup>42</sup>

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<sup>32</sup> Because sections 1305-A(b)(4) & (6) include reporting requirements for lobbying firms, it has been added here.

<sup>33</sup> This provision in subsection (j) is similar to the requirement in section 1305-A(b)(3)(i) of Act 2006-134. 65 Pa.C.S. § 1105(b)(6) relates to gifts to State officials or employees in the aggregate of \$250 or more in a calendar year, and 65 Pa.C.S. § 1105(b)(7) relates to payments and reimbursement for transportation, lodging or hospitality exceeding \$650 in the aggregate for the calendar year.

<sup>34</sup> This provision in subsection (j)(1) is similar to the requirement in section 1305-A(b)(3)(ii) of Act 2006-134.

<sup>35</sup> This information is necessary for the recipient State official or employee to report to the Ethics Commission, as required by section 1305-A(b)(3)(iv) of Act 2006-134.

<sup>36</sup> This requirement is contained at section 1305-A(b)(3) of Act 2006-134.

<sup>37</sup> Inherent in the position of the State official or employee is the governmental body.

<sup>38</sup> This requirement is contained at 65 Pa.C.S. § 1105(b)(6).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> This provision in subsection (j)(3)(i) is similar to the requirement in sections 1305-A(b)(2) & (3)(i) of Act 2006-134.

<sup>42</sup> Inherent in the position of the State official or employee is the governmental body.

(ii) The name and address of the source of the payment.<sup>43</sup>

(iii) The value of the transportation, lodging or hospitality.<sup>44</sup>

(5) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall not include the cost of a reception which the State official or employee attends in connection with public office or employment.<sup>45</sup>

(6) For purposes of the act, there is no requirement under section 1305-A (relating to reporting) to disclose anything of value received from immediate family when the circumstances make it clear that motivation for the action was the personal or family relationship.<sup>46</sup>

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 1304-A or 1305-A of the act, or under section 1105(b)(6) or (7) of the Ethics Act:<sup>47</sup>

(1) Gifts and hospitality items that are returned unused or are reimbursed to the donor within 30 days of the date of receipt need not be reported.

(2) The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received by the donee. Such valuation shall not include a political contribution, which is otherwise reported as required by law.<sup>48</sup>

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(3) The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.<sup>49</sup>

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging

<sup>43</sup> This requirement is contained at 65 Pa.C.S. § 1105(b)(7).

<sup>44</sup> *Id.*

<sup>45</sup> This provision in subsection (j)(4) is contained in a new requirement in section 1305-A(b)(3)(iii) of Act 2006-134.

<sup>46</sup> This is the requirement at subsection 1305-A(b)(3)(v) of Act 2006-134. There is also a similar provision at 65 Pa.C.S. § 1105(b)(6).

<sup>47</sup> The Committee may wish to consider whether to retain this list of exceptions to gifts, transportation, lodging or hospitality that were listed in the former regulations.

<sup>48</sup> This is the same conclusion that the Subcommittee on the Interim Guidelines reached at Section X(A) of the Guidelines.

<sup>49</sup> On March 15, the Committee asked the Department to consider defining "marketplace transaction" in section 51.1. "Marketplace transactions" could be defined as the "usual and normal charge of goods in the market in which they would have been purchased at the time of the transaction, which occurs in an 'arms-length' transaction." With reference to services, "marketplace transactions" could be defined as "the hourly or piecemeal charge for the services at a commercially reasonable rate prevailing at the time the services were rendered." These definitions were taken in part from the Federal Election Commission Regulations at 11 C.F.R. § 100.52(d)(1) & (2) (relating to definition of the terms "anything of value" and "usual and normal charge for goods and services.")

or hospitality shall equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in **marketplace transactions**.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method<sup>50</sup> to determine the value of gifts, transportation, lodging or hospitality.<sup>51</sup>

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(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value<sup>52</sup> of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(iii) Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each public official or **employee** of the public official's or **employee's** inclusion in the report **at least seven days prior to**<sup>53</sup> the submission of the report to the **Department**. The notice shall include the information which will enable the public official or **employee** to comply with section 1105(b)(6) and (7) of the Ethics Act.

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(m) A **lobbying firm or** lobbyist **not associated with a lobbying firm**, required to be registered under the act, shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the **lobbying firm's or** lobbyist's knowledge.<sup>54</sup> If the principal is unable to secure the signature of the lobbyist, the principal shall attach a

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<sup>50</sup> Section 1305-A(b)(2.1) of Act 2006-134 requires the use of any reasonable method of estimation and allocation for filing an expense report.

<sup>51</sup> The requirement to include a detailed explanation of the specific method used is not required by section 1305-A of Act 2006-134, so the Department did not include it in this regulation or in its quarterly expense reports or the instructions to those reports. The committee may wish to consider whether to include this requirement from the former regulations.

<sup>52</sup> *Id.*

<sup>53</sup> Section 1305-A(b)(3)(iv) of Act 2006-134 requires submission of this notice at least 7 days prior to the submission of the report.

<sup>54</sup> Section 1305-A(b)(4) of Act 2006-134 requires lobbying firms or lobbyists not associated with a lobbying firm to attest to the validity and accuracy of the reports submitted by the principal.



statement<sup>55</sup> to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature. Such statement shall be on a form prescribed by the Department.<sup>56</sup>

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(1) A lobbying firm or lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.<sup>57</sup>

(2) Lobbying firms' or lobbyists' statements as to limitations of knowledge shall be on a form prescribed by the Department<sup>58</sup> and shall describe the limitations and the reasons for the limitations with specificity.

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(n) When a lobbying firm or lobbyist is required to file a separate report under subsection (e),<sup>59</sup> the following shall apply:

(1) When more than one lobbyist in a lobbying firm would be required to file a separate report, they shall have the option of filing the reports jointly.<sup>60</sup>

(i) The joint filing of a separate report does not exempt<sup>61</sup> the various lobbying firms<sup>62</sup> or lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

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(ii) All lobbying firms or<sup>63</sup> lobbyists joining in a joint report shall sign the report as provided in § 51.10 (relating to signing and designation of certain filings).

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(2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the due date of the principal's report, or 30 days after discovery of the principal's failure to file, or 30 days after the lobbyist or lobbying firm should have reasonably discovered the principal's failure to file.<sup>64</sup>

<sup>55</sup> Because an affidavit is not required by section 1305-A of Act 2006-134, the Department only required a statement on the quarterly expense reports in the event that a principal is unable to secure the signature of the lobbyist.

<sup>56</sup> Section 1308-A(b) of Act 2006-134 grants the Department the authority to prescribe the expense reporting forms to be used.

<sup>57</sup> Section 1305-A(b)(4) of Act 2006-134 contains this requirement.

<sup>58</sup> Section 1308-A(b) of Act 2006-134 grants the Department the authority to prescribe the expense reporting forms to be used.

<sup>59</sup> Section 1305-A(b)(6) of Act 2006-134 requires a lobbying firm or lobbyist to submit an expense report if the expenses of the lobbying firm or lobbyist were not contained in any expense report filed by the principal(s) represented by the lobbying firm or lobbyist.

<sup>60</sup> The Committee may wish to consider whether it wishes to retain this requirement relating to joint filing.

<sup>61</sup> The Department changed the word "excuse" to "exempt" for clarity and to avoid the negative connotation of the word "excuse."

<sup>62</sup> Section 1305-A(b)(6) applies to both lobbyists and lobbying firms.

<sup>63</sup> *Id.*

<sup>64</sup> The Committee asked the Department to retain the essence of the former language and add the additional requirements contained above.

(3) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form prescribed by the ~~Department~~.<sup>65</sup>

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(4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by section 1305-A(b)(2), (3), ~~(6)~~, (7) ~~and (8)~~ of the act.<sup>66</sup>

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(6) A separate quarterly expense report or separate amended quarterly expense report may include a statement which sets forth, with specificity, the limitations of the ~~lobbying firm's or the~~ lobbyist's knowledge and the reasons for the limitations.<sup>67</sup>

(7) A ~~lobbying firm or~~<sup>68</sup> lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall promptly provide it to the principal.

(8) A ~~lobbying firm or~~<sup>69</sup> lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each public official or ~~employee~~ of the public official's or ~~employee's~~ inclusion in the report ~~at least~~ 7 days ~~prior to~~ the submission of the report to the ~~Department~~.<sup>70</sup> The notice shall include the information which will enable the public official or ~~employee~~ to comply with section 1105(b)(6) and (7) of the Ethics Act.

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~~(o) Whenever any person makes an expenditure for indirect communication under this section, for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, the communication shall clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.~~<sup>71</sup>

### Cross References

This section cited in 51 Pa. Code § ~~5~~1.1 (relating to definitions); 51 Pa. Code § ~~5~~1.2 (relating to application to Ethics Act regulations); and 51 Pa. Code § ~~5~~3.5 (relating to termination).

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<sup>65</sup> Section 1308-A(b) of Act 2006-134 grants the Department the authority to prescribe the expense reporting forms to be used.

<sup>66</sup> The Department added subsections 1305-A(b)(6) and (8) because these subsections specifically refer to lobbying firms or lobbyists.

<sup>67</sup> Section 1305-A(b)(4) allows for such a statement on the limitation of the lobbying firm's or lobbyist's knowledge of the information reported by the principal.

<sup>68</sup> Section 1305-A(b)(6) applies to both lobbyists and lobbying firms.

<sup>69</sup> *Id.*

<sup>70</sup> Section 1305-A(b)(3)(iv) requires notice at least seven days prior to the submission of the report.

<sup>71</sup> Section 1305-A(e) contains this requirement.

§ 55.2. Records maintenance, retention and availability.

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(a) A registrant shall maintain financial records reasonably necessary to substantiate the reports of lobbying activity made under section 1305-A of the act.<sup>72</sup>

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(1) The Department shall prescribe standardized forms for reports, which shall be used by all principals, lobbying firms and lobbyists required to be registered under the act.<sup>73</sup>

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(2) In maintaining records, registrants may use any reasonable methods of estimation and allocation.<sup>74</sup>

(3) Records of lobbying activity may be kept pursuant to any reasonable accounting basis, which includes:<sup>75</sup>

(i) Cash basis - revenue and related assets are recognized when received and expenses are recognized when payment is disbursed. For example, payroll costs are reported when paid, not when the associated hours are worked.

(ii) Accrual basis - income is recognized when earned and expenses when incurred. For example, payroll is recognized when the associated hours are worked regardless of when payment is made.

(iii) Modified accrual basis – recognizes an economic transaction or event as revenues in the operating statement when the revenues are both measurable and available to liquidate liabilities of the current period. Available means collectible in the current period or soon enough thereafter to be used to pay liabilities of the current period. Similarly, expenditures are generally recognized when an event or transaction is expected to draw on current spendable resources.<sup>76</sup>

(4) Records of lobbying activity shall be maintained in sufficient detail to enable the

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<sup>72</sup> This language is essentially taken from the *Interim Guidelines* at Section V (relating to Recordkeeping) in subsection B (relating to Valuation Consideration).

<sup>73</sup> Section 1308-A(b) of Act 2006-134 grants the Department the authority to prescribe the registration and expense reporting forms to be used by registrants. Subsections 1305-A(b)(4), (6) & (8) include lobbying firms in the requirement to file quarterly expense reports.

<sup>74</sup> Section 1305-A(b)(2.1) of Act 2006-134 provides that registrants may use any reasonable methods of estimation and allocation. The Department moved this requirement to a separate subsection at the Committee's request.

<sup>75</sup> Three accounting methods listed here (cash, accrual and modified accrual basis) are listed in the instructions for the quarterly expense reports, and are also be included in the *Interim Guidelines*, issued by the Lobbying Disclosure Regulations Committee. (The Department moved this section from 55.1(c) to this subsection at the Committee's request.)

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<sup>76</sup> On March 7, 2007, at a meeting of a subcommittee formed to draft Interim Guidelines, one of the members of the subcommittee asked the Department to add the "modified accrual basis" of accounting to the other reasonable methods of accounting previously listed in the *Guidelines*.

registrant to fully comply with the act and this part.<sup>77</sup>

(5) The records shall identify the general subject matter or issue being lobbied.<sup>78</sup> The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

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(6) A registrant should keep its records on the same accounting basis for the two-year period covering its registration under the act. If a registrant changes its accounting basis, then it should make an internal record noting the date of the change and the reason for the change.<sup>79</sup>

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.<sup>80</sup>

(1) Records that integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit under this section and Chapter 61 (relating to compliance audits).

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(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method,<sup>81</sup> but the method used shall be described in detail in the records maintained as to the expenditure.

(3) A registrant may value time spent lobbying in using any of the following examples of viable options as long as the method selected is a reasonable method of estimation and allocation.<sup>82</sup>

(i) A registrant may employ a good faith estimate by using any reasonable method of estimation and allocation;

(ii) A registrant may keep a record of all of the time spent lobbying; or

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(iv) A registrant may use the entire fee expended for lobbying.

(c) A registrant shall retain all documents used in recordkeeping<sup>83</sup> reasonably necessary

<sup>77</sup> Section 1305-A(b)(2.1) provides that registrants may use any reasonable methods of estimation and allocation.

<sup>78</sup> Section 1305-A(b)(1) requires the disclosure of the general subject matter or issue being lobbied.

<sup>79</sup> On March 7, 2007, the subcommittee reached a consensus to include this statement in the *Interim Guidelines*. It is included here for the full Committee's consideration.

<sup>80</sup> Section 1305-A(b)(2.1) provides that registrants may use any reasonable methods of estimation and allocation.

<sup>81</sup> *Id.*

<sup>82</sup> The Committee included these examples of viable options in Section V(C) of the *Interim Guidelines* on pages 8 and 9.

<sup>83</sup> The Department added this phrase "used in recordkeeping" for clarity.

to substantiate the reports to be made under section 1304-A or 1305-A of the act (relating to registration; and reporting) for four years from the date of filing of the subject report.<sup>84</sup>

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(1) The documents used in recordkeeping<sup>85</sup> shall include, but not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars, and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form to the extent possible, as provided in subsection (5) below.<sup>86</sup>

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the ~~Department, the Commission, the~~ Office of Attorney General or the Board<sup>87</sup> to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

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(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit shall be as complete and detailed as is reasonably possible, and shall include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document the expenditure, which record shall include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures shall reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

<sup>84</sup> Section 1305-A(c) of Act 2006-134 contains this requirement.

<sup>85</sup> The Department added this phrase "used in recordkeeping" for clarity.

<sup>86</sup> The Department added this phrase based on the Committee's discussion.

<sup>87</sup> These are the audit and enforcement authorities recognized by sections 1308-A(f) and 1309-A of Act 2006-134.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or ~~employee~~ who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

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(5) The number of immediate family members of a State official or ~~employee~~, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

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(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 1305-A(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 1305-A(b)(5) of the act (relating to 10% of the total resources received by the principal)<sup>88</sup> shall reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General, ~~the Department, the Commission or the Board~~,<sup>89</sup> all documents reasonably necessary to substantiate reports made under section 1305-A of the act shall be made available for inspection and copying within 30 days.

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(1) Either the Office of Attorney General, ~~the Department, the Commission or the Board~~<sup>90</sup> may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

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<sup>88</sup> The Department added this parenthetical reference for clarity.

<sup>89</sup> These are the audit and enforcement authorities recognized by sections 1308-A(f) and 1309-A of Act 2006-134.

<sup>90</sup> *Id.*

(2) Computerized/electronic records shall be provided in readable form.

**§ 55.3. Public inspection and copying.**

(a) The Department will make completed expense reports, which have been filed with the Department, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying.<sup>91</sup>

(b) The Department will make all reports available on a publicly accessible Internet web site. Documents maintained and reproducible in an electronic format shall be provided in that format upon request.<sup>92</sup>

**§ 55.4. Reliance on Manual.** A registrant's establishment and maintenance of records in reliance on any manual or interim guidelines adopted by the Committee shall be deemed to be in compliance with the act during the time when the manual or guidelines are in effect.

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<sup>91</sup> Section 1308-A(c) of Act 2006-134 contains this requirement.

<sup>92</sup> *Id.*